(2) Supreme Court, U.S.

No. 01 361 AUG 22 2001

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In The

Supreme Court of the United States

CHRISTOPHER T. HARRIS,
Petitioner,

v.

CITY OF DORAVILLE, ET AL.,
Respondents.

On Petition For Writ Of Certiorari
To The United States Court of Appeals
for the Eleventh Circuit

SUPPLEMENTAL APPENDICES:
Opinions, Orders and Judgments of the U.S. District Court
for Northern Georgia, Atlanta Division
and the U.S. Circuit Court of Appeals for the Eleventh Circuit
Granting and Affirming Summary Judgment to Respondents
and Dismissing the Civil Action

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46 pp

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

CHRISTOPHER T. HARRIS

Plaintiff,

v.

CITY OF DORAVILLE, CITY OF DORAVILLE POLICE DEPARTMENT, CHIEF RON DAVIS, MAJOR CLIFFORD EDWARDS, LIEUTENANT ROBERT BROWN, DETECTIVE T.L. BAGGETT, SERGEANT H.M. PRITCHETT, OFFICER BETH STOCK, and UNKNOWN DORAVILLE POLICE OFFICERS

Defendants.

CIVIL ACTION NO.
1:98-CV-1326A-JEC

ORDER

This case is presently before the Court on defendants' Renewed Motion for Summary Judgment [145], defendants' Motion to Dismiss Notice of Appeal [156], plaintiff's Motion for Sanctions Hearing (158], plaintiff's Third Motion to Enlarge Time to File Response in Opposition to Defendants' Memorandum of Law in Support of Motion for Summary Judgment [164], plaintiff's Second Motion to Strike the Defense of the Alleged Bar by the Georgia Civil Statute of limitations [165], plaintiff's Motion for Reconsideration of the Court's Order of

[unnumbered page break]

April 12, 2000 Denying the Plaintiff's Motions for the Sanction of Default Judgment or, in the Alternative, Motion to Request Amendment of Order [166], and plaintiff's Motion for Reconsideration of the Court's Order of April 12, 2000 Denying the plaintiff's Motions for Enlargement of Time to File Response to Defendants' Motion for Summary Judgment or, in the Alternative, Motion to Request Amendment of Order [167]. The Court has

reviewed the record and the arguments of the parties and, for the reasons set forth below, concludes that defendants' Renewed Motion for Summary Judgment [145] should be **GRANTED**, defendants' Motion to Dismiss Notice of Appeal [156] should be **DENIED**, plaintiff's Motion for Sanctions Hearing [158] should be **DENIED**, plaintiff's Third Motion to Enlarge Time to File Response in Opposition to Defendants' Memorandum of Law in Support of Motion for Summary Judgment [164] should be **DENIED**, plaintiff's Second Motion to Strike the Defense of the Alleged Bar by the Georgia Civil Statute of Limitations [165] should be **DENIED**, plaintiff's Motion for Reconsideration of the Court's Order of April 12, 2000 Denying the Plaintiff's Motions for the Sanction of Default Judgment or, in the Alternative, Motion to Request Amendment of Order [166] should be **DENIED**, and plaintiff's Motion for Reconsideration of the Court's Order of April 12, 2000 Denying the Plaintiff's Motions

for Enlargement of Time to File Response to Defendants' Motion for Summary Judgment or, in the Alternative, Motion to Request Amendment of Order [167] should be **DENIED**.

BACKGROUND

I. Procedural Background

This familiar case has been before the Court on numerous discovery motions. (*See* Order [161]; Order [146]; Order [139]; Order [75]; Order [42]; Order [10].) Indeed, in the Court's ultimate Order resolving discovery disputes issued on April 12, 2000, the Court noted that it had already granted plaintiff a 50-day extension to file his substantive response to defendants' motion for summary judgment and ordered plaintiff to file a substantive response within seven days of the Order. (Order [161] at 2-3.) Moreover, the Court warned, "**If plaintiff fails to respond within this time period with a substantive response. the Court will grant defendants' motion for summary judgment as unopposed.**" (*Id.* at 3 (emphasis in original).)

On April 21, 2000, the eve of plaintiff's deadline to file a substantive response to defendants' motion for summary judgment, plaintiff filed a document renewing his previously filed Response to Defendants' Statement of Undisputed Facts [121], Statement of Genuine Issues for Trial [121], and the

lengthy Affidavit of Christopher T. Harris [122]. In addition, on the same

date, plaintiff filed his Third Motion to enlarge Time to File Response in Opposition to Defendants' Motion for Summary Judgment [164] despite the Court's warning in its Order [161] that the seven-day deadline was a firm one and despite the Court's admonishment that it would not entertain any further extensions of time. Finally, plaintiff filed his Second Motion to Strike the Defense of Alleged Bar by the Georgia Civil Statute of Limitations [165] on the same day.[1]

Notably, aside from authority cited in his motion to strike defendants' statute of limitations defense, plaintiff cites no

[1] Plaintiff filed this second motion in contravention of the Court's clear directive issued in response to plaintiff's first motion to strike the statute of limitations defense. (*See* Order [139] at 16-17.) In the Order denying his first motion to strike this defense, the Court wrote,

> The Court is unwilling to determine the propriety of each of defendants' defenses in a piecemeal fashion. Plaintiff may assert his arguments as to why defendants' motion for summary judgment should not be granted in his response to defendants' motion for summary judgment. At that time, plaintiff may challenge defendants' statute of limitations defense. Accordingly, plaintiff's motion to strike defendants' statute of limitations defense is **DENIED**.

(*Id.*) This is a typical example of plaintiff's continued defiance of this Court's authority. (*See also* Order [146] at 4 (admonishing plaintiff that, if he was a litigant represented by counsel, the Court would have sanctioned plaintiff for the frivolity of his motions).)

case law and makes no legal argument in support of his federal or state claims. This is especially critical in the instant case where the individual municipal employees have asserted the defense of qualified immunity. Moreover, plaintiff has not explicated his municipal liability claims against either the City of Doraville or its Police Department. Instead, plaintiff has spent the bulk of his response making allegations without citations to the record or to evidence submitted in this case. Despite these obvious failures, the Court will address plaintiff's claims.

II. Factual Background

On May 1, 1996 at approximately 9:30 P.M., plaintiff noted that some of his weapons were missing from his home. (Stock Dep. at 9; Pl.'s dep. at 120; Pl.'s Resp. to Defs.' Stmt. of Mat. Facts [121] at ¶ 1.) Fearing that his son, David Harris, had stolen the weapons, plaintiff called 911 and was transferred to the Doraville police department. (P1.'s Dep. at 119-20; Pl.'s Resp. to Defs.' Stmt. of Mat. Facts [121] at ¶ 2.) According to plaintiff,

he told the dispatcher that his son was mentally disturbed and that he feared that his son could be suicidal. (Harris Dep. at 120.) Defendant Officer Bethann Stock was called to the scene to investigate the theft. (Stock Dep. at 9; pl.'s Resp. to Defs.' Stmt. of Mat. Facts

5

[121] at ¶ 3.) As the alleged theft had already occurred, Officer Stock was the only officer dispatched to the scene. (Stock Dep. at 9.)

While waiting for the police to arrive, plaintiff walked toward a glass patio door where he saw his son standing outside the door on the patio. (Pl.'s Aff. [122] at ¶ 11.) When he encountered his son, the latter shot at plaintiff with a Rossi revolver. (*Id.*; Pl.'s Dep. at 117.) According to plaintiff, the bullet shattered when it struck the glass, and the fragments struck him above the heart; in addition, the bullet jacket struck plaintiff in the chest, causing a large wound over his heart, alongside many small wounds from the bullet fragments. (P1.'s Aff. [122] at ¶¶ 22-23.) Thereafter, plaintiff ran out of the side door to his house in an attempt to escape from his revolver-wielding son. David Harris fired two more shots at plaintiff as plaintiff escaped from the house, but those shots missed. (*Id.* at ¶ 23-24.)

As Officer Stock arrived at the scene, she heard several gunshots as she passed plaintiff's house in her patrol car. [Stock Dep. at 14-15.] In addition, Officer Stock heard screaming. (*Id.* at 16.) In her rear view mirror, Officer Stock saw two men running at her. (*Id.* at 21.) Officer Stock testified in her deposition that she did not stop her car at

6

this point but, instead, drove down the road, turned her car around, and slowly headed back toward the two individuals. (*Id.* at 18.) She testified that David Harris stopped chasing his father and fired the revolver at her. (*Id.* at 24.) In his affidavit, plaintiff claims that Officer Stock accelerated quickly away from him and that he screamed at the fleeing police car while running after the car. {Pl.'s Aff. [122] at ¶¶ 27-28.) He also claims that as Officer Stock was driving away, David Harris shot at him two additional times, striking him in the back and in the elbow (*Id.* at ¶ 31.) Plaintiff also claims that as Officer Stock was accelerating away from the scene, she radioed into dispatch, informing the dispatcher that David Harris was firing at her. (*Id.* at ¶ 32.) In contrast to Stock's deposition testimony, plaintiff claims that David Harris did not fire shots. at Officer Stock. (*Id.* at ¶ 36.)

According to Officer Stock, she stopped her vehicle, opened her door, crouched behind the open door, and pointed her weapon at David Harris. (Stock Dep. at 26.) She explained that Harris turned and fled down the street back toward plaintiff's house, stopping only momentarily to fire yet another shot at her. *(Id.* at 25.) Officer Stack did not fire at the fleeing assailant because she felt that he was too far away for her to

get a clean shot and because she felt that it was too dangerous to fire into the neighborhood as neighbors had begun to gather outside of their homes. *(Id.* at 26.)

As David fled toward plaintiff's house, she turned her attention to plaintiff who had collapsed parallel to her police vehicle. (*Id.* at 23, 32-33; Pl.'s Aff. [122] at ¶ 36.) After advising the dispatcher of the shots that were fired and determining that plaintiff was not armed, she grabbed her first response kit and turned to help plaintiff who appeared to be seriously injured on his chest, his elbow,[2] and his leg.[3] (*Id.* at 28-29.) Eventually, two officers arrived at the scene to keep Officer Stock covered as she rendered first aid to plaintiff. (*Id.* at 34.) In addition, an ambulance arrived and transported plaintiff to the hospital. (Pl.'s Aff. [122] at ¶¶ 39-40.) Officer Stock left the scene and did not participate

[2] Officer Stock testified that she saw plaintiff's bone protruding from his elbow. (Stock Dep. at 34.)

[3] Plaintiff complains that Officer Stock stopped to render aid to him as opposed to following David in an attempt to apprehend him. In his deposition, he stated that Officer Stock should have shot back at his son and should have pursued David because plaintiff had told her that he was "alright." (Harris Dep. at 114-15.) Indeed, plaintiff complains that Officer Stock should have apprehended David before he could get "in the house where he could have gotten more ammunition, more guns, reloaded, got out, and terrorized the neighborhood." (*Id.* at 115-16.)

in any further events related to plaintiff. (Stock Dep. at 36, 49.)

After plaintiff was taken away, Doraville police officers arrived at plaintiff's house, established a perimeter around the crime scene, and began to search for David Harris, as Officer Stock had not captured him. (Pl.'s Resp. to Defs.' Stmt. of Mat. Facts [121] at ¶¶ 8-9; Defs.' Stmt. of Mat Facts [110] at ¶¶ 8-9.) At approximately 9:58 P.M., the police officers, fearing the

David Harris could be in the house or return to the house to restock his ammunition or weapons supply, searched the house for weapons and ammunition. (Defs.' Stmt. of Mat. Facts [110] at Pritchett Aff. at ¶ 5, Ex. A ("Pritchett Supplemental Report"); Baggett Aff. at Ex. A ("May 9, 1996 Search warrant Application") at 2.) Although the officers did not locate David Harris at this time,[4] they seized several weapons and ammunition from plaintiff's house. (*Id.*) Upon plaintiff's return from the hospital, the police officers returned all weapons and ammunition to plaintiff. (Pl.'s Dep. at 131.)

While searching for weapons in plaintiff's bedroom, defendant Sergeant H.M. Pritchett noticed a black, hard plastic

[4] David Harris was captured near Pensacola in Escambia County, Florida and was extradited to Decatur, Georgia on May 19, 1996. (Baggett dep. at 19.)

case, approximately the size of a hand gun case. (Pritchett Supplemental Report at 1.) The case was lodged between the wall and a chest of drawers. (*Id.*; Pl.'s Dep. at 58.) Sergeant Pritchett checked the case for weapons. At that time, he noticed, sitting next to the black case, a framed picture of an eleven or twelve-year-old girl jumping rope naked.[5] (Pritchett supplemental Report at 1; Pl.'s Dep. at 58; *see also* Pl.'s Dep. at Exs. 1-2 (actual frame and picture found by Pritchett); May 9, 1996 Search Warrant Application at 2.) Alarmed, Sergeant Pritchett called this photograph to the attention of defendant Lieutenant Robert Brown.[6] (Pritchett

[5] Plaintiff explains that this picture was cut out from a nudist magazine and that the reverse side of the picture depicts a nudist mother with her toddler. (P1.'s Resp. to Defs.' Stmt. of Mat. Facts [1213 at ¶ 12; see *also* Pl.'s Dep. at Exs. 1-2.) plaintiff admits that this picture was placed in a frame and was located behind his dresser at the time of the May 1, 1996 search. (Pl.'s Dep. at 58.)

[6] Aside from Lieutenant Brown and sergeant pritchett, no other named defendant participated in the actual search of plaintiff's house on May 1, 1996. Indeed, the undisputed evidence presented by defendants demonstrates that Officer Stock left the scene of the shooting after the ambulance arrived. (Stock Dep. at 36, 49.) In addition defendants police Chief Ronald Davis, Major Clifford Edwards, and Detective H.L. Baggett were at the scene of the shooting but did not actually enter plaintiff's house to search. (Dets.' Stmt. of Mat. Facts (110] at Edwards Aff. at ¶ 4, Ronald Davis Aff. at ¶ 4; Baggett flep. at 7-8.) police Chief Davis and Major Edwards admit that they were at the crime scene acting only in a supervisory capacity. (Defs.' Stmt. of Mat. Facts (110] at Edwards

supplemental Report at 1; Pritchett Aff. at ¶ 6.) After noting the picture, Sergeant Pritchett replaced the picture in the spot from which it was found and continued searching for weapons. (*Id.*)

After the May 1, 1996 episode, Detective Baggett began an investigation into the shooting. (Baggett Aff. at ¶ 4; May 9, 1996 Search Warrant Application at 1.) On May 3, 1996, Detective Baggett received a call from Sondra London, a woman who lived with plaintiff for a number of years, who told him that plaintiff was in possession of a videotape depicting "very young girls engaged in acts of a sexual nature."[7] (*Id.* at 2; Baggett Dep. at 32-33, 34.) In addition, on May 6, 1996, a young girl and her father came to the Doraville police station to talk to Detective Baggett. (May 9, 1996 Search Warrant Application at 2.) The young girl revealed that plaintiff could be found around neighborhood girls "a lot," particularly girls between the ages of 11 and 14. (*Id.*)

Aff. at ¶ 4, Ronald Davis Aft. at ¶ 4.)

[7] Ms. London also explained to Detective Baggett that she told plaintiff to get rid of the tape but that plaintiff refused, claiming that he "couldn't get in trouble for just that." (May 9, 1996 Search Warrant Application at 2.)

Armed with this information, Detective Baggett interviewed six young girls and their guardians from the neighborhood. One of these children, a twelve-year-old girl, explained that plaintiff had taken and retained a video of her and another twelve-year-old girl "acting in a homosexual manner towards one another." (May 9, 1996 Search Warrant Application at 1-2.) Moreover, the same young girl stated that there was another video where a twelve-year-old girl exposed her breasts to the camera while plaintiff was videotaping and that plaintiff retained a copy of this videotape. (*Id.* at 2.) All six reported that they knew that plaintiff had a picture of one of the twelve-year-old girls "in the nude." (*Id* at 2.)

In addition, one of the girls explained that plaintiff had taken a picture of one of twelve-year-old girls in a bikini and using his computer, altered the photograph by removing the bikini and drawing breasts and pubic hair onto the photograph. (*Id.*) Another girl turned over three letters written by plaintiff to another girl. In one of these letters, plaintiff referred to a twelve-year-old girl as "sexy." (*Id.*; *see also* Pl.'s Dep. at Ex. 38.) Finally, the girls revealed that they knew that plaintiff did not wear any underwear and that, on

separate occasions, plaintiff had exposed his "genitals" to the girls.[8] (*Id.*)

On May 9, 1996, Detective pritchett wrote a search warrant application for plaintiff's home. In this application, Detective Baggett documented his investigation and included the information that the witnesses had provided him. (May 9, 1996 Search Warrant Application at 2.) In addition, Detective Baggett described the photograph that Pritchett had discovered on May 1, 1996 in the search for David Harris and weapons at plaintiff's house. (*Id.*) In the search warrant, Detective Baggett requested to search for "video tapes containing child pornography (either commercial or home-made) depicting juvenile

[8] In plaintiff's response to defendants' statement of undisputed facts, plaintiff agrees that Detective Baggett documented this evidence in his application for a search warrant but disagrees as to the veracity of this information, claiming that Detective Baggett did not really believe that "there was any real support for any such belief [that plaintiff had child pornography in his home]." (Pl.'s Resp. to Defs.' Stmt. of Mat. Facts [122] at ¶ 24.) Indeed, plaintiff claims that Detective Baggett was being "deliberately deceptive" in his application for a search warrant. (*Id.*) Moreover, plaintiff claims that none of the witnesses interviewed by Detective Baggett actually "said or indicated anything against plaintiff." (*Id.* at ¶ 25.) Although plaintiff makes these blustery allegations, he offers no evidence from the record to support his contentions that Detective Baggett was deliberately lying in his affidavit in support of his search warrant application. Instead, he argues that it is defendants' burden to bring forth evidence of a "disinterested witness" to support Detective Baggett's search warrant application.

females performing various sexually explicit acts, video camera(s), computer components including disks, hard drives, monitors, and printers used to alter photos depicting juveniles in the nude[,] photographs of juvenile females showing participants in the nude, and computer altered or enhanced photos depicting juvenile females in the nude." (*Id.* at 3.) In this application, Detective Baggett stated that these items are in violation of O.C.G.A. § 16-12-100 entitled "sexually explicit conduct by minor for use in a vi[s]ual medium." (*Id.* at 3.) A Doraville City Judge issued the warrant after making a determination that there existed probable cause to search the residence. (*Id.*)

On May 9, 1996 at approximately 5:30 P.M., Detective Baggett, Lieutenant Brown, and Major Edwards, along with three or four other officers, were waiting at plaintiff's house for plaintiff as he returned from work. (Pl.'s Dep. at 148-49.)

The officers searched plaintiff's car and home, seizing a number of

items including "photographs, letters, a zodiac printout, files, college term papers, poetry, computer equipment and computer files, videotapes, a camcorder, books, and magazines." (Baggett Aff. at ¶ 6; Baggett Dep. at 21-22.) In addition, Detective Baggett found "a picture of a [juvenile]

female with her hand placed inside a pair of bikini shorts, app[arently] masturbating." (Baggett Dep. at 22.)

Based on the evidence discovered in the search and the information documented in his application for a search warrant, Detective Baggett applied for an arrest warrant, explaining that plaintiff "did photograph a 12 year old female in various sexual poses while in a bikini . . . [and] alterations made through use of a computer." (Baggett Aff. at Ex. C; Baggett Dep. at 21-22.) The arrest warrant charged plaintiff with misdemeanor "sexually explicit conduct by a minor for use in visual medium" in violation of O.C.G.A. § 16-12-100. (Baggett Aff. at Ex. C.)

While the search was taking place, an unnamed officer instructed plaintiff to sit in the police car during the search, and, according to plaintiff, within a few minutes, the officer got into the car and drove plaintiff to the police station. (Pl.'s Dep. at 152.) Plaintiff was arrested, searched, and put in a holding cell. (*Id.* at 153.) He was granted a $10,000 bond and finally bonded out of jail on May 16, 1996 by a group of plaintiff's co-employees. (Pl.'s Aff. [122] at ¶¶ 73, 78.)

When plaintiff returned to his home on May 16, 1996, he noted that his police scanner was still in its place on his

dining room table. (Pl.'s Aff. [122] at ¶ 79.) Plaintiff spent the night at a colleague's house on May 16 and returned the next day to his home. (*Id.*) When plaintiff *entered* his house, he discovered that the house had been broken into and his police scanner had disappeared along with other files and boxes.(*Id.* at ¶ 80.) In addition, plaintiff's bedroom door had been forced open and broken by the intruders. (*Id.*) Plaintiff did not report the burglary to the police until June 28, 1996, purportedly because he was afraid of the Doraville police. (Pl.'s Dep. at 173.)

During the search on May 9, 1996, the officers had uncovered a video tape that they later discovered contained a young girl dancing.[9] During this "sexually suggestive" dance, the young girl raised her shirt, exposing her

breasts.[10] (Pl.'s

[9] Plaintiff explained in his deposition that while he was videotaping the dancer the young girl motioned to him that her brother, a juvenile who was under the covers of his bed with his juvenile girlfriend, was being "jerked off" by his girlfriend. (P1.'s Dep. at 192, 194-95.) Indeed, at the end of the video, the young girl came close to the camera and whispered to plaintiff that "she . . . is jerking him off." plaintiff responded, "And now the world will know." (*Id.* at 198.)

[10] Although plaintiff does not dispute that this dance was sexually suggestive, (pl.'s Dep. at 200), and the fact that he should not have videoed the twelve-year-old girl raising her shirt to expose her breasts, (id. at 201) plaintiff contends that this twelve-year-old girl was simply dancing in the style made popular on television

Resp. to Defs.' Stmt. of Mat. Facts [121] at ¶ 34; Defs.' Stmt. of Mat. Facts [110] at ¶ 34.) Based on this video tape and other information gathered during his investigation, Detective Baggett applied for another arrest warrant on June 17, 1996.[11] (Baggett Aff. at Ex. D.) In this arrest warrant, Detective Baggett charged plaintiff with felony sexual exploitation of children based on the possession of "a video tape showing juvenile female exposing breasts and acting in a sexually explicit manner in violation of OCCA § 16-12-100." (*Id.*) On the same day, Detective Baggett and another officer arrived at plaintiff's house and arrested him. (Baggett Dep. at 43.)

Plaintiff remained in jail from June 17 until June 20. (Pl.'s Dep. at 182.) On that day, he was taken to DeKalb Magistrate Court, where the magistrate judge set bond at

stations like MTV and similar to a dance demonstrated by Demi Moore on 20/20 in an interview with Barbara ~alters. (Pl.'s Resp. to Defs.' stmt. of Mat. Facts [121] at ¶ 34.)

[11] Between May 19, 1996 and June 1996, Detective Baggett met with plaintiff's son to discuss, *inter alia,* plaintiff's alleged past history of child exploitation. (Baggett Dep. at 19, 37.) David Harris explained to Detective Baggett that, when the former was approximately five-years-old, plaintiff fondled a young girl in front of him, encouraging David to participate. (*Id.* at 20.) In addition, David explained "that he knew about [plaintiff's] propensity *for* being attracted to female children" and that due to plaintiff's "association with several children in a former neighborhood," David felt that plaintiff "might be engaging in those activities again." (*Id.*)

$7,500. (*Id.* at 184-85.) On July 15, 1996, plaintiff appeared for a probable

cause hearing, and after hearing testimony from Detective Baggett, the magistrate judge found that there was sufficient probable cause to bind the case over to DeKalb Superior Court. (Pl.'s Aff. [122] at ¶¶ 99, 102-03.)

On February 5, 1998, plaintiff, through counsel, filed a motion to dismiss the two arrest warrants. (*Id.* at ¶ 107.) On April 28, 1998, Judge Edward S. Wheeler dismissed the misdemeanor arrest warrant but refused to dismiss the felony arrest warrant. (*Id.*) Plaintiff has attempted to appeal the judge's determination through the Georgia courts and filed in the United States Supreme Court a petition for writ of certiorari to the Georgia Court of Appeals. (*Id.* at ¶ 111.) This petition was denied on October 4, 1999. *See Harris v. Georgia*, 120 S. Ct. 177 (1999).

On May 8, 1998, plaintiff, proceeding pro se, filed suit against the City of Doraville, Georgia, the Doraville police Department, Chief of police Ron Davis, Major Clifford Edwards, Lieutenant Robert Brown, Detective T.L. Baggett, Sergeant H. M. Pritchett, Officer Beth Stock, and Unknown Doraville Police Officers. (Compl. [1] at 1.) Plaintiff alleges seven 42 U.S.C.. § 1983 counts against the individual officers and the municipalities. In his first two counts, plaintiff claims that

defendants violated his Fourth Amendment right to be free from unreasonable searches and seizures when they conducted the May 1, 1996 search and seized plaintiff's firearms and ammunition. (*Id.* at ¶¶ 61-62.) In Counts Three through Five, plaintiff asserts that defendants violated his Fourth Amendment rights on May 9, 1996 by arresting him without probable cause, by searching his home without probable cause, or, in the alternative, by exceeding the scope of the search warrant in seizing property from his house. (*Id.* at ¶¶ 63-65.) In Count Six, plaintiff states that defendants violated his Fourth Amendment rights when they allegedly broke into plaintiff's home on May 17, 1996 and stole his police scanner and other files. (*Id.* at ¶ 66.) Finally, plaintiff maintains that defendants violated his Fourth Amendment rights when they arrested him on June 17, 1996 without probable cause. (*Id.* at ¶ 67.)

Furthermore, plaintiff's complaint contains seven additional counts alleging similar violations of the Georgia Constitution's search and seizure clause. (*Id.* at ¶¶ 77-83.) In addition, plaintiff maintains state tort law claims of false and malicious arrest, false imprisonment, and intentional infliction of emotional distress. (*Id.* at ¶¶ 88-105.)

19

DISCUSSION

I. Summary Judgment Standard

Summary judgment is not properly viewed as a device that the trial court may, in its discretion, implement in lieu of a trial on the merits. Instead, Rule 56 of the Federal Rules of Civil procedure *mandates* the entry of summary judgment against a party who fails to make a showing sufficient to establish the existence of every element essential to that party's case on which that party will bear the burden of proof at trial. *Celotex Corp. V. Gatrett*, 477 U.S. 317, 322 (1986). In such a situation, there can be no genuine issue as to any material fact, as a complete failure of proof concerning an essential element of the nonmoving party's case necessarily renders all other facts immaterial. *Id.* at 322-23.

The movant bears the initial responsibility of asserting the basis for his motion. *Id.* at 323; *Apcoa, Inc. V. Fidelity Nat'l Bank*, 906 F.2d 610, 611 (11th Cir. 1990). The movant is not required to negate his opponent's claim, however. The movant may discharge his. burden by merely "'showing' –that is, pointing out to the district court--that there is an absence of evidence to support the nonmoving party's case." *Celotex*, 477 U.S. at 325. After the movant has carried his burden, the nonmoving party is then required to "go beyond the pleadings"

20

and present competent evidence[12] designating "'specific facts showing that there is a genuine issue for trial.'" *Id.* at 324 (quoting FED. R. CIV. P. 56(e)). While the court is to view all evidence and factual inferences in a light most favorable to the nonmoving party, *Samples v. City of Atlanta*, 846 F.2d 1328, 1330 (11th Cir. 1988), "the mere existence of *some* alleged factual dispute between the parties will not defeat an otherwise properly supported motion for summary judgment; the requirement is that there be no *genuine* issue of *material* fact." *Anderson V. Liberty Lobby, Inc.*, 477 U.S. 242, 247-48 (1986).

A fact is material when it is identified as such by the controlling substantive law. *Id.* at 248. An issue is genuine when the evidence is such that a reasonable jury could return a verdict for the nonmovant. *Id.* at 249-50. The nonmovant "must do more than simply show that there is some metaphysical doubt as to the material facts . . . where the record taken as a whole could not lead a rational trier of fact to find for the nonmoving party, there is no 'genuine issue for trial.'" *Matsushita Electric Indus. Co. v. Zenith*

Radio Corp., 475 U.S.

[12] The nonmoving party may meet its burden through affidavit and deposition testimony, answers to interrogatories, and the like. *Celotex*, 477 U.S. at 324.

574, 586-87 (1986) (citations omitted). An issue is not genuine if it is unsupported by evidence, or if it is created by evidence that is "merely colorable" or is not significantly probative." *Anderson*, 477 U.S. at 249-50. Thus, to survive a motion for summary judgment, the nonmoving party must come forward with specific evidence of every element material to that party's case so as to create a genuine issue for trial.

II. Federal Constitutional Claims

A. *Introduction*

Plaintiff has alleged violations of his Fourth Amendment right to be free from unreasonable search and seizure. Plaintiff alleges that his rights were violated on four different dates. First, plaintiff contends that the search of his home and subsequent seizure of his weapons an May 1, 1996 were not justified by an exception to the Fourth Amendment's warrant requirement. Second, plaintiff claims that the search warrant issued on May 9, 1996 was not supported by probable cause, or, in the alternative, the officers exceeded the scope of the warrant by seizing materials not included within the warrant's scope. Third, plaintiff maintains that his May 9, 1996 arrest was not supported by probable cause and, as such, violated the Fourth Amendment. In addition, plaintiff claims that police officers illegally searched and seized items from

his house on May 17, 1996. Finally, plaintiff asserts that his June 17, 1996 arrest was likewise not supported by probable cause.

The individual defendants[13] contend, however, that they did not violate the Fourth Amendment. (Defs.' Mem. in Supp. of Mot. for Summ. J. [110] at 9-19.) Moreover, they argue that even if the Court finds that they violated plaintiff's constitutional rights, they are entitled to qualified immunity as a matter of law. (*Id.* at 20-22.) In addition, defendants claim that plaintiff's claims stemming from the May 1, 1996 searches are barred by the two-year statute of limitations applicable to § 1983 claims in Georgia. (*Id.* at 8-9.) Finally, both the Doraville Police Department[14] and the City of

[12] Inasmuch as plaintiff has brought these claims against the individual defendants in their official capacity, the official capacity claims must be **DISMISSED.** A claim against a public official in his official capacity equates to a claim against the agency for which the official works. *See Kentucky V. Graham*, 473 U.S. 159, 165-66 (1985). Accordingly, these official capacity claims are folded into the claims against the City of Doraville discussed *infra.* Thus, the discussion of the claims against the individual defendants relates to the claims against them in their individual capacities.

[14] The Doraville Police Department correctly argues that it is not a proper party to this litigation, as a suit against the City's Police Department is the same as a suit against the City. See *Wayne V. Jarvis*, 197 F.3d 1098, 1105 (11th Cir. 1999) (holding that district court should have dismissed suit against DeKalb County Sheriff's Department

Doraville argue that plaintiff has failed to establish municipal liability. (*Id.* at 22-23.) The Court will first address the claims against the individual defendants and then delve into plaintiff's municipal liability claims.

B. *Claims Against the Individual* Defendants

1. Qualified Immunity

"Qualified immunity protects government officials performing discretionary functions from civil trials (and the other burdens of litigation, including discovery) and from liability if their conduct violates no 'clearly established statutory or constitutional rights of which a reasonable person would have known.'" *Lassiter V. Alabama A & M Univ.*, 28 F.3d 1146, 1149 (11th Cir. 1994) (quoting *Harlow v. Fitzgerald*, 457 U.S. 800, 818 (1982)). "That qualified immunity protects government actors is the usual rule; only in exceptional cases will government actors have no shield against claims made

because claims against Sheriff's Department were redundant where plaintiff also sued DeKalb County); *Dean v. Barber*, 951 F.2d 1210, 1214 (11th Cir. 1992) ("Sheriff's departments and police departments are not usually considered legal entities subject to suit.") As plaintiff has named both the City of Doraville and the City of Doraville Police Department as defendants, the suit against the Police Department is redundant. Accordingly, the Court **GRANTS** the City of Doraville Police Department's motion for summary judgment, and the Court will treat plaintiff's municipal liability claims as being brought against the City.

against them in their individual capacities." *Id.* (citations and emphasis omitted). Accordingly, there is a two-prong test to determine if qualified immunity applies: (1) were defendants performing a discretionary function

when they were performing the search at issue in this case and (2) did defendants' actions violate "clearly established law"?

As to the first inquiry, plaintiff fails to address whether the defendants were performing discretionary functions when they performed the searches, seizures, and arrests in question in this case. Hence, the Court concludes that there is no dispute that the individual defendants in this case were performing a discretionary function when they executed the searches, seizures, and arrests at issue. Since "(t]here is no doubt in the present case that the officers were acting within their discretionary authority, ... the sole issue is whether their actions violated clearly established law." *Hartsfield v. Lamacks*, 50 F.3d 950, 953 (11th Cir. 1995). The burden is on plaintiff to show that the defendants violated clearly established law. *Id.* Plaintiff cannot discharge this burden "simply by referring to general rules or abstract rights" but, rather, must point to clearly established law. *Id.* at 954.

"When considering whether the law applicable to certain facts is clearly established, the facts of the cases relied

upon as precedent are important. The facts need not be the same as the facts of the immediate case. But they do need to be materially similar." *Adams v. St. Lucie Co. Sheriff's Dept.*, 962 F.2d 1563, 1575 (11th Cir. 1992) (Edmonson, J., dissenting), *approved en banc*, 998 F.2d 923 (11th Cir. 1993). To be clearly established, however, "does not mean that a court must have previously found the very action in question to be unlawful, but it does mean that 'in light of preexisting law the unlawfulness must be apparent.'" *Jordan v. Doe*, 38 F.3d 1559, 1566 (11th Cir. 1994) (quoting *Anderson v. Creighton*, 483 U.S. 635, 640 (1987)). The Eleventh Circuit has explained, "As we have stated often, '"[p]ublic officials are not obligated to be creative or imaginative in drawing analogies from previously decided cases."'" *Jones v. City of Dothan*, 121 F.3d 1456, 1460 (11th Cir. 1997) (citing *Jenkins V. Talladega City Bd. of Educ.*, 115 F.3d 821, 827 (11th Cir. 1997) (en banc) (quoting *Adams*, 962 F.2d at 1575)).

The qualified immunity question presented in this case is whether Fourth Amendment law "clearly established" that the searches, seizures, and arrests in this case were unconstitutional. The crucial date for determining the state of the law is the date that the events took place, in May and June of 1996. For law to be clearly established, it must have

been in effect at the time of the alleged unconstitutional conduct, "In this circuit, the law can be 'clearly established' for qualified immunity purposes only by decisions of the U.S. Supreme Court, Eleventh Circuit Court of Appeals, or the highest court of the state where the case arose." *Jenkins,* 115 F.3d at 827 n.4.

2. May 1, 1996 Search and Seizures

As an initial matter, defendants claim that plaintiff's claims stemming from the May 1, 1996 search and seizures are time barred, as plaintiff failed to file suit within two years of the search and seizures. Section 1983 claims "are governed by the forum state's residual personal injury statute of limitations." *Burton v. City of Belle Glade,* 178 F.3d 1175, 1188 (11th Cir. 1999). In Georgia, the statute of limitations for personal injury is two years. *See* O.C.G.A. § 9-3-33. Accordingly, "the Georgia two-year personal injury limitations period applies to § 1983 actions in Georgia district court." *Kelly v. Serna,* 87 F.3d 1235, 1238 (11th Cir. 1996).

Plaintiff filed his original lawsuits in federal district court on May 8, 1998. (Compl. [1] at 1.) Accordingly, to avoid the statute of limitations bar, plaintiff's cause of action must have accrued on or after May 8, 1996. See *Rozar V. Mullins,* 85 F.3d 556, 561 (11th Cir. 1996). "The general

federal rule is that 'the statute [of limitations] does not begin to run until the facts which would support a cause of action are apparent or should be apparent to a person with a reasonably prudent regard for his rights.'" *Id.* (quoting *Mullinax v. McElhenney,* 817 F.2d 711, 716 (11th Cir. 1987)). "Plaintiffs must know or have reason to know that they were injured, and must be aware or should be aware of who inflicted the injury." *Id.*

In the instant case, plaintiff should have known that his rights were violated at the time the search and seizures took place on May 1, 1996. Indeed, as evidenced by plaintiff's testimony during his deposition and the fact that the police returned his weapons and ammunition upon his release from the hospital on May 2, 1996, it is clear that plaintiff knew that the officers searched his home and seized weapons and ammunition on May 1, 1996. (Pl.'s Dep. at 131.) Thus, plaintiff's Fourth Amendment search and seizure claims stemming from the May 1, 1996 search of plaintiff's home accrued the moment the allegedly illegal search and seizures occurred.

As all three of these § 1983 claims accrued on May 1, 1996, in order to avoid the statute of limitations bar, plaintiff must have brought the lawsuit within two years, or by May 1, 1996 [sic, should be May 2, 1998]. Plaintiff

filed this lawsuit on May 8, 1996, [sic, should be 1998] however,

28

one week after the statute of limitations had elapsed. Under these circumstances, plaintiff's claims of illegal search and seizure arising out of the May 1, 1996 search are untimely.

In order to avoid the harsh consequences of the statute of limitations, plaintiff argues, inter alia,[15] that the statute of limitations should be tolled because the defendant officers were engaged in a conspiracy to violate plaintiff's constitutional rights that began with the May 1, 1996 search and continued, at the earliest,[16] on May 16, 1996 when he was

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[15] Plaintiff also argues that defendants, by failing to file a motion to dismiss based on the statute of limitations grounds, waived the statute of limitations defense and, as such, may not assert such a defense at the summary judgment stage. (Pl.'s Second Mot. to Strike Defs.' Stat. of Lim. Defense [165] at 3-7.) This contention is patently frivolous and is not supported by case law. Defendants asserted the defense that plaintiff's claims were barred by the applicable statute of limitations in their answer, (see Defs.' Ans. [3] at 4), and had no duty to assert this defense in a motion to dismiss as opposed to asserting this defense in the pending motion for summary judgment.

[16] Plaintiff contends that the statute of limitations should be tolled until the present time, as he contends that the City of Doraville and its police officers continue to harass him to this day. (Pl.'s Second Mot. to Strike Defs.' Stat. of Lim. Defense [165] at 13.) Indeed, plaintiff currently implicates others in the conspiracy to deprive him of his constitutional rights, including DeKalb County Superior Court Judge James H. weeks, who plaintiff alleges "tried to coerce plaintiff to sign a waiver of his constitutional rights . . . by and through the brutal, mutilating beatings of and acts of mental cruelty against the plaintiff's son in the DeKalb County Jail and in the judge's chambers and his courtroom." (*Id.* at 15.)

29

released from jail on bond. (Pl.'s Second Mot. to Strike Defs.' Stat. of Lim. Defense [165] at 10, 13.) To support this contention, plaintiff cites to *Young v. State*, 205 Ga. App. 357, 422 s.E.2d 244 (1992). *Young,* however, dealt with the criminal statute of limitations for conspiracy under O.C.G.A. § 16-10-21 and does not deal with the continuing tort theory applicable to Georgia civil cases. *See id.* at 363, 250.

As discussed *supra,* the instant case is controlled by Georgia law regarding the statute of limitations. "Georgia recognizes the theory of continuing tort, which applies 'where any negligent or tortious act is of a

continuing nature and produces injury in varying degrees over a period of time.'" *Mears v. Gulfstream Aerospace Corp.*, 225 Ga. App. 636, 640 484 S.E.2d 659, 664 (1997) (quoting *Everhart v. Rich's, Inc.*, 229 Ga. 798, 802, 194 s.E.2d 425 (1972)). A continuing tort is one that is inflicted over a period time. *See Ritterman v. Emory Univ.*, 175 Ca. App. 348, 333 S.E.2d 378, 379 (1985). The Eleventh Circuit has recently given two examples of a continuing tort under Georgia law:

> The discovery rule has been applied, for example, in a case involving plaintiffs who were injured by six years of exposure to toxic chemicals that the defendant sprayed in their house. *See Andel v. Getz Servs., Inc.*, 191 Ga. App. 653, 399 S.E.2d 226, 228 (1990). In another case, the court concluded that

30

> the discovery rule applied where the plaintiff suffered from lead poisoning caused by fumes he inhaled during the five years that he worked in the defendant's battery treatment plant. *See* [*King v. Seitzingers, Inc.*, 160 Ca. App. 318, 287 S.E.2d 252, 254-55 (198l)].

M.H.D. v. Westminster Schools, 172 F.3d 797, 805 (11th Cir. 1999). Yet, in that same case, the panel refused to apply the continuing tort theory to a plaintiff who had been sexually abused four times within a few months. *Id*

In the instant case, the Court finds that Georgia's continuing tort theory does not apply to plaintiff's claims stemming from the May 1, 1996 search and seizures. As discussed *supra*, the illegal search and seizure claims accrued on May 1, 1996, as these were distinct constitutional violations that were completed on that date. Indeed, the Georgia courts are clear that the continuing tort theory does not apply to torts that constitute "a completed wrong." *See Adams v. Emory Univ. Clinic*, 179 Ga. App. 620, 622, 347 S.E.2d 670, 672 (1986). *See also Lipsteuer v. CSX Transp. Inc.*, 236 Ga. App. 806, 809, 513 s.E.2d 532, 535 (1999) and *Hoffman v. Insurance Co. of North Amer.*, 241 Ga. 328, 330, 245 S.E.2d 287 (1978). In this case, it is clear that the alleged illegal search and seizures were completed at the time that the officers engaged in the allegedly unconstitutional behavior.

31

Accordingly, the Court finds that these torts are not similar to those torts that

Georgia courts have found to be "continuing." Accordingly, plaintiff's claims against all individual defendants stemming from the May 1, 1996 search and seizures of plaintiff's weapons are barred by the applicable two-year statute of limitations.

Moreover, plaintiff has not presented sufficient evidence to demonstrate that the officers violated his Fourth Amendment rights when they conducted a search of his home and seized his weapons on May 1, 1996. Although "'[i]t is "a basic principle of Fourth Amendment Law" that searches and seizures inside a home without a warrant are presumptively unreasonable,' ... '[a] warrantless search is allowed, however, where both probable cause and exigent circumstances exist.'" *United States v. Reid*, 69 F.3d 1109, 1113 (11th Cir 1995) (quoting *Payton v. New York*, 445 U.S. 573, 586 (1980) and *United States v. Tobin*, 923 F.2d 1506, 1510 (11th Cir. 1991) (en banc)). "Probable cause to search exists where the facts lead a reasonably cautious person to believe that the 'search will uncover evidence of a crime.'" *United States v. Ramos*, 933 F.2d 968, 972 (11th Cir. 1991) (quoting *United States V. Burgos*, 720 F.2d 1520 (11th Cir. 1983)). "Exigent circumstances exist 'when the inevitable delay incident to obtaining a warrant must

give way to an urgent need for immediate action." *Id.* (quoting *United States v. Satterfield*, 743 F.2d 827, 844 11th Cir. 1984)).

In the instant case, because the individual officers are asserting the defense of qualified immunity, the officers "need not have actual probable cause but only 'arguable probable cause.'" *Montoute v. Carr*, 114 F.3d 181, 184 (11th Cir. 1997). Arguable probable cause exists when "an *officer* reasonably could have believed that probable cause existed, in light of the information the officer possessed." *Id.* "Thus, the qualified immunity standard is broad enough to cover some 'mistaken judgment,' and it shields from liability 'all but the plainly incompetent or those who knowingly violate the law.'" *Id.* (quoting *Malley v. Briggs*, 475 U.S. 335, 343 (1986)).

In the instant case, the undisputed facts demonstrate that the officers had actual probable cause to believe that the fugitive David Harris may have returned to plaintiff's home and that weapons could be found at plaintiff's residence. Furthermore, the police, in searching plaintiff's home and seizing his weapons and ammunition, acted under several of the recognized situations in which exigent circumstances exists.

Turning first to the issue of probable cause, Officer Stock arrived at the scene of what she believed to be burglary, as

33

plaintiff, at approximately 9:30 P.M., called into the Doraville Police Department and reported that his son "had taken one or more of my guns." (Pl.'s Aff. [122] at ¶ 21.) According to plaintiff, he also explained to the dispatcher that his son was "mentally disturbed." (*Id.*) Officer Stock arrived at the scene and immediately heard several gunshots and saw two people running towards her car in her rear view mirror. (Stock Dep. at 14-15, 21.) As she turned her car around, she heard additional shots. (*Id.*) Moreover, plaintiff averred in his *first* affidavit that David Harris had fired a weapon at least twice at plaintiff in the direction of Officer Stock's police car.[17] (Pl.'s Aff. [122] at ¶ 31.) After Officer Stock screamed at David Harris to drop the gun, he turned and ran back in the direction of plaintiff's house. (Stock dep. at 32-33; pl.'s Aff. [122] at ¶ 36.)

[17] In his deposition and in his affidavit, plaintiff vehemently contests Officer Stock's testimony that David Harris fired shots at her. Rather, plaintiff claims that as he was running after Officer Stock's vehicle, his son fired at him twice, hitting him in the back and in the elbow. (Pl.'s dep. at 113; Pl.'s Aff. [122] at ¶¶ 29-31, 36.) Regardless of whether these two shots can be construed as being fired at the officer or at plaintiff, it is clear that David Harris was armed and dangerous, as he was clearly willing to fire shots in a residential neighborhood.

34

At approximately 9:58 P.M., 28 minutes after plaintiff's call to the Doraville Police Department, Sergeant Pritchett and other officers arrived at the scene, established a perimeter around the neighborhood, and performed a search of plaintiff's house.[19] (Pritchett Supplemental Report at 1.) In his supplemental report, Sergeant Pritchett indicated that the search was initiated in order to locate David Harris and weapons. (*Id.*)

Based on the totality of the circumstances, it is clear that the responding officers had actual probable cause to search plaintiff's house for David Harris or for weapons with which David Harris could use to harm the officers or other members of the public. That is the officers had reason to believe that David Harris, an individual who had recently committed the crime of aggravated assault on his father, had immediate access to the house and the cache of weapons within the house. Moreover, plaintiff and Officer Stock saw David Harris run toward the house in his attempt to flee from Officer Stock. Although plaintiff contends in his response to

[18] The evidence is undisputed that Officer Stock left the scene and did not take part

in the search of plaintiff's house on May 1, 1996. (Stock Dep. at 36, 49; Pl.'s dep. at 127.) Accordingly, plaintiff's claims against Officer stock based on the search and seizures of May 1, 1996 are **DISMISSED**

35

defendants' statement of undisputed facts that various police radio transmissions indicated that plaintiff had been spotted at a Montessori school near plaintiff's home,[19] it was reasonable for the officers to believe that David Harris could have returned to plaintiff's home with his weapons. During the cover of night, it was certainly reasonable to believe that the fugitive could have slipped back into his father's home either to procure addition [sic] weapons or ammunition or to find sanctuary.

Likewise, it was also reasonable for the police officers to secure any weapons and ammunition found in the house in order to protect themselves during the pendency of the search for the fugitive. Plaintiff admits that he had many guns in his home at the time of this incident. (Pl.'s Dep. at 117-18.) Indeed, plaintiff informed the dispatcher that his mentally disturbed son had taken "one or *more of my guns,*" indicating to the officers that there were more weapons in the house with which David Harris could utilize if he secreted himself in the house or if he returned to the house at a later time. Accordingly, the officers had a reason to believe that other weapons could be found at plaintiff's house and those weapons

[19] (See Pl.'s Resp. to Defs.' Stmt. of Mat. Facts [121] at ¶ 11.)

36

could be utilized by David Harris if he returned to the residence at a later time that evening

Turning to the question of exigency, the Court likewise concludes that the officers were faced with exigent circumstances sufficient to justify a warrantless search of plaintiff's home. As the former Fifth Circuit has explained, "The exigent circumstances doctrine recognizes several common situations where the time consuming resort to a neutral magistrate for an arrest or search warrant is unnecessary, for example: hot pursuit, ... fleeing suspect, ... danger to arresting officers or the public from the suspect...." *United States v. Kreimes,* 649 F.2d 1185, 1192 (5th Cir. Unit B 1981) (citations omitted). Moreover, the Eleventh Circuit has identified several factors which indicate exigent circumstances, including:

> (1) the gravity or violent nature of the offense with which the suspect is to be charged; (2) a reasonable belief the suspect is armed; (3) probable cause to believe the suspect committed the crime; (4) strong reason to believe that the suspect is in the premises being entered; (5) a likelihood that delay could cause the escape of the suspect or the destruction of essential evidence, or jeopardize the safety of officers or the public.

United States v. Standridge, 810 F.2d 1034, 1037 (11th Cir. 1987).

37

In the instant case, these five circumstances are easily met. First, David Harris had just completed an aggravated assault on his father on the street of a residential neighborhood by firing a revolver at least five times. Second, both plaintiff and Officer Stock witnessed plaintiff flee with pistol in hand. (Pl.'s Aff. [122] at ¶ 36; Stock Dep. at 25, 32-33.) Third, the police, prior to searching plaintiff's residence, clearly had probable cause to believe that David Harris had committed the shootings based upon plaintiff's 911 call and Officer Stock's observations. Fourth, as discussed above, the police knew that David Harris had fled in the direction of plaintiff's house, had access to the house, and knew that there were weapons in the house, supporting the officers' reasonable belief that plaintiff had fled to the house or could return to the house to access the cache of weapons stored therein. Finally, any delay in apprehending David Harris would have caused great danger to the community and to the officers at the scene, as David Harris had already demonstrated his propensity far violence as moments before, he fire [sic] numerous shots into a residential neighborhood. *Cf. Standridge,* 810 F.2d at 1037 (FBI agents justified in conducting warrantless arrest at suspected armed robber's hotel room in part due to the fact that "any delay increased the risk

38

that innocent members of the public might be injured if [defendant] attempted to leave the motel") and *Kreimes*, 649 F.2d at 1191 (finding warrantless search to be reasonable due to "a combination of hot pursuit, the immediate need to discover fleeing conspirators and the danger posited by the possibility of an armed fugitive remaining at large, late at night, in a rural area").

Indeed, plaintiff's admissions in the instant case further support the

conclusion that these officers acted reasonably in attempting to apprehend David Harris and by securing weapons and ammunition from plaintiff's home. In his deposition, plaintiff admonished Officer stock for failing to apprehend his son. He stated, "If he was running away and not trying to shoot at her, she could have pursued him and apprehended him before he even could have got in the house where he could have gotten more ammunition, more guns, reloaded, got out and terrorized the neighborhood." (Pl.'s Dep. at 115-16 (emphasis added).) Moreover, plaintiff admitted that, in seizing the weapons and ammunition from his house, the officers were trying to protect him and "everybody else." (*Id.* at 131.) Furthermore, plaintiff admitted that the officers returned all his weapons and ammunition to him when he was released from the hospital the next day, further supporting the officers' claims

that they were merely trying to protect plaintiff and the public by entering his house to search for David Harris and any weapons he could utilize.[20] (*Id.*)

Moreover, even if plaintiff were able to demonstrate that the search and seizures of his weapons violated the Fourth Amendment, plaintiff has failed to carry his burden of persuasion as to the qualified immunity issue. "Once an officer or official has raised the defense of qualified immunity, the burden of persuasion on that issue is on the plaintiff." *Montoute*, 114 F.3d at 184. That is, "[t]he burden of showing that an officer violated clearly established law falls on the plaintiff, and a plaintiff's citation of general rules and abstract rights is insufficient to strip a § 1983 defendant of his qualified immunity." *Jackson v. Sauls*, 206

[20] The Supreme Court has held, "The Fourth Amendment permits a properly limited protective sweep in conjunction with an in-home arrest when the searching officer possesses a reasonable belief based on specific and articulable facts that the area to be swept harbors an individual posing a danger to those on the arrest scene." *Maryland v. Ruis*, 494 U.S. 325, 337 (1990). *See also United States v. Tobin*, 923 F.2d 1506, 1513 (11th Cir. 1991). As discussed above, the officers clearly possessed specific facts that led them to believe that David Harris was hiding out in plaintiff's home. Accordingly, the police officers had the right to enter the home to attempt to arrest the armed and dangerous fugitive and concomitantly enjoyed the right to conduct a protective sweep for weapons that could be used against them or other unsuspecting members of the public.

F.3d 1156, 1165 (11th Cir. 2000). In the instant case, plaintiff has failed to

respond to defendants' motion for summary judgment and, accordingly, has not carried his burden of persuasion on this issue. Indeed, plaintiff has cited no case law demonstrating that the officers' actions in the instant case violated his Fourth Amendment rights. Accordingly, the Court **GRANTS** defendants' motion for summary judgment on plaintiff's claims based upon the May 1, 1996 search of his residence.

In addition, as the Court has concluded that the officers were legally in plaintiff's house searching for weapons and for the fleeing suspect, then the Court must also conclude that Sergeant Pritchett legally saw plaintiff's picture of the naked girl jumping rope. The only evidence before the Court on this subject indicates that the picture was located between plaintiff's dresser and the wall of his bedroom and that Sergeant Pritchett discovered the picture while legally searching for weapons.[21] Once Pritchett discovered the picture, he showed it to Lieutenant Brown, replaced it in its prior

[21] In his deposition, plaintiff admitted that the picture was between the wall and the dresser. (Pl.'s Dep. at 38.) Moreover, plaintiff has presented no evidence that Sergeant Pritchett's version of the facts is incorrect, as he did not depose Pritchett or any other officer who was in the house during the May 1, 1996 search.

position, and did not take the picture as evidence against plaintiff. This brief "seizure" of the undeniably disconcerting picture of a barely pubescent girl jumping rope in the nude did not violate plaintiff's clearly established constitutional rights. *Cf. Coolidge v. New Hampshire,* 403 U.S. 443, 465 (1971) ("Where the initial intrusion that brings police within plain view of [contraband] is supported, not by a warrant, but by one of the recognized exceptions to the warrant requirement, the seizure is legitimate.") and *Tobin,* 923 F.2d at 1513 ("The agents were, of course, free to seize any evidence they discovered in plain view within the proper scope of the protective sweep.").

3. May 9, 1996 search

Next, plaintiff contends that the May 9, 1996 search warrant was invalid and that the subsequent search of his home and the seizures of property within his home were illegal. For a search warrant to be valid, it must be supported by probable cause. Probable cause exists "where the known facts and circumstances are sufficient to warrant a man of reasonable prudence in the belief that contraband or evidence of a crime will be found." *Ornelas v. United States*, 517 U.S. 690, 696 (1996). In the instant case, this

standard is easily met.

42

As discussed *supra,* Detective Baggett began investigating the shooting almost immediately after the shooting began. During the course of this investigation, he interviewed six young girls and their guardians from plaintiff's neighborhood who explained to him about several videotapes that plaintiff had made containing two young girls feigning homosexuality and of one young girl exposing her breasts and dancing in a suggestive manner. Moreover, the girls told him that plaintiff altered a picture of a neighborhood girl wearing a bikini to appear as if the young girl was nude and gave Detective Baggett letters written by plaintiff containing inappropriate sexual language. Additionally, the girls explained that plaintiff had exposed himself to the girls an several occasions. Finally, Detective Baggett received a phone call from Sondra London, who Detective Baggett found to be credible, indicating that plaintiff was in possession of video tapes depicted very young girls engaged in sexual conduct.

Although plaintiff argues that Detective Baggett was lying and thus submitted a false affidavit to support his application for a search warrant,[22] he presents no evidence to support this

[22] These allegations, if proven, could possibly support a violation of *Franks v. Delaware,* 438 U.S. 154 (1978). As discussed above, however, plaintiff presents no evidence–other than the blustery allegations contained in his affidavits, deposition, and response to defendants'

43

allegation. Indeed, in his deposition, plaintiff admits to possessing a videotape displaying a young neighborhood girl exposing her breasts and dancing in a suggestive manner, (Pl.'s Dep. at 204), to possessing numerous pictures depicting young girls in the nude, (*Id.* at 91-92), to altering the picture of the young neighborhood girl to make it appear as if she was nude, (*Id.* at 232-33), and to writing the letters to the young girls, (*Id.* at 208-10). Accordingly, by plaintiff's own admission, these facts that Detective Baggett utilized to garner the May 9, 1996 search warrant were true.

It is clear that Detective Baggett obtained plentiful evidence to support his reasonable belief that plaintiff possessed in his home sexually explicit pictures depicting children in various states of undress and a video

of a neighborhood girl exposing herself and acting in a sexual manner evidencing a violation of O.C.G.A. § 16-12-100.[23] The

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statement of undisputed facts--to support his claim that Detective Baggett lied in his affidavit. Moreover, in his deposition, plaintiff admitted that many of the facts included in the warrant were true.

[23] This section provides:

(a) As used in this Code section, the term:

(1) "Minor" means any person under the age of 18 years.

(2) "Performance" means any play, *dance*, or exhibit to be shown to or viewed by an audience.

(3) "Producing" means producing, directing,

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manufacturing, issuing, or publishing.

(4) "Sexually explicit conduct" means actual or simulated:

* * *

(C) Masturbation;

(D) Lewd exhibition of the genitals or pubic area of any person;

(b) (1) It is unlawful for any person knowingly to employ, use, persuade, induce, entice, or coerce any minor to engage in or assist any other person to engage in any sexually explicit conduct for the purpose of producing any visual medium depicting such conduct.

* * *

(5) It is unlawful for any person knowingly to create, reproduce, publish, promote, sell, distribute, give, exhibit, or possess with intent to sell or distribute any visual medium which depicts a minor engaged in any sexually explicit conduct.

(6) It is unlawful for any person knowingly to advertise, sell, purchase, barter, or exchange any medium which provides information as to where any visual medium which depicts a minor engaged in any sexually explicit conduct can be found or purchased.

* * *

(8) It is unlawful for any person knowingly to possess or control any material which depicts a minor engaged in any sexually explicit conduct.

* * *

(d) The provisions of subsection (b) of this Code section shall not apply to the activities of law enforcement and prosecution agencies in the investigation and prosecution of criminal offenses or to legitimate medical, scientific, or educational activities.

* * *

(g) (1) Except as otherwise provided in paragraphs (2) and (3) of this subsection, any person who violates a provision of this Code section shall be guilty of a felony and, upon conviction thereof, shall be punished by imprisonment for not less than five years nor more than 20 years

Court concludes that Detective Baggett had sufficient probable cause to justify obtaining a warrant to search plaintiff's home.[24]

In addition, as Detective Baggett actually obtained a search warrant from a magistrate, under *United States v. Leon,* 468 U.S. 897, 922 n.23 (1984), the proper test is whether under the totality of the circumstances "a reasonably well trained officer would have known that the search was illegal despite the magistrate's authorization." *See also United Sates v. Taxacher,* 902 F.2d 867, 871 (11th Cir. 1990). Likewise, the Supreme Court has held that where a police official asserts qualified immunity when sued under § 1983 for obtaining a warrant based on an affidavit that is later determined to be insufficient, qualified immunity offers the same, albeit no

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and by a fine of not more than $100,000.00. In the event, however, that the person so convicted is a member of the immediate family of the victim, no fine shall be imposed.

(2) Any person who violates paragraph (8) of subsection (b) of this Code section shall be guilty of a misdemeanor.

(3) Any person who violates subsection (c) of this Code section shall be guilty of a misdemeanor.

O.C.G.A. § 16-12-100.1 (West 2000).

[24] As the Court concludes that the search warrant was supported by probable cause, all defendants are entitled to summary judgment as to this claim along with Detective Baggett.

more, protection in the civil context as *Leon* offers in the criminal context. *See Malley v. Briggs,* 475 U.S. 335, 344 (1986). Thus, although an officer cannot avoid liability on an insufficient application or warrant merely by passing the responsibility onto the issuing magistrate, he can, however, rely on the fairly high standard set out in *Leon:* that is, only where the warrant application is so lacking in indicia of probable cause as to render belief in its existence unreasonable shall immunity be lost. *Id.* at 345 ("The analogous question in this case is whether a reasonably well-trained officer in petitioner's position would have known that his affidavit failed to establish probable cause and that he should not have applied for the warrant."). As the Court has already determined that Detective Baggett had sufficient probable cause to support the search warrant, he also is entitled to qualified immunity on this claim

Plaintiff's final claim with regard to the May 9, 1999 search is that

the officers exceeded the scope of the warrant "in that it called for the seizure of items not illegal" and "none of the items seized were in violation [of O.C.C.A. § 16-12-100]." (Pl.'s Resp. to Defs.' Stmt. of Mat. Facts [121] at ¶ 31.) Neither of these two grounds constitute actionable constitutional claims. *See United States v. Schandl*, 947 F.2d

47

462, 465-66 (11th Cir. 1991) ("It was inevitable that same irrelevant materials would be seized as agents searched through numerous documents for evidence.... Indeed, it might have been more disruptive had the agents made a thorough search of each individual document and computer disk before removing it from [defendant's] home and office."). The Court concludes that the police did not exceed the scope of the warrant by seizing "photographs, letters, a Zodiac printout, files, college term papers, poetry, computer equipment and computer files, videotapes, a camcorder, books and magazines." (*Id.*) In the search warrant, Detective Baggett requested to search for "video tapes containing child pornography (either commercial or home-made) depicting juvenile females performing various sexually explicit acts, video camera(s), computer components including disks, hard drives, monitors, and printers used to alter photos depicting juveniles in the nude[,] photographs of juvenile females showing participants in the nude, and computer altered or enhanced photos depicting juvenile females in the nude." (May 9, 1996 Search Warrant Application at 3.) Clearly, the items seized from plaintiff's house fell within the general types of items listed in the search warrant. *See Schandl,* 947 F.2d at 465-66. *See generally United States v. Jackson,* 120 F.3d 1226, 1229 (11th

48

Cir. 1997). Inasmuch as the items seized were not specifically listed in the warrant, the officers were permitted "in the course of performing a lawful search for an item listed on the warrant, [to seize] other articles of an incriminating character." *United States v. Jenkins*, 901 F.2d 1075, 1081 (11th Cir. 1990). Moreover, plaintiff has not presented "clearly established law" that would have indicated to the officers that their behavior violated his fourth Amendment rights, and, accordingly, defendants are entitled to qualified immunity.

Accordingly, defendants' motion for summary judgment on plaintiff's claims stemming from the May 9, 1996 search is **GRANTED.**

4. Plaintiff's Arrests on May 9, 1996 and June 17, 1996

Plaintiff challenges the May 9, 1996 arrest on the grounds that it was not supported by probable cause. The evidence submitted in this case, however, supports the conclusion that the officers had more than enough probable cause to support the May 9, 1996 arrest for a misdemeanor violation of O.C.G.A. § 16-12-100

Plaintiff admits that, on May 9, 1996, he had numerous pictures of nude juvenile girls in his house. (Pl.'s Dep. at 56.) Specifically, plaintiff admits that, behind his dresser

49

in his room, he had a framed picture of a young teenage girl jumping rope naked that he had clipped from a nudist magazine. (*Id.* at 58.) Moreover, the officers found numerous nude pictures of children, (*see* Pl.'s Dep. at Exs. 1, 4, 6, 8), several homemade photographs of a neighborhood juvenile girl posing in a bikini in various sexually suggestive poses (*Id.* at Exs. 10-14), a picture of two neighborhood juvenile girls suggestively pulling up their shirts and shorts, (*Id.* at Ex. 24), and many pictures of juvenile girls apparently clipped from girls clothes catalogues and a newspaper, (*id.* at Exs. 25-37). These pieces of evidence combined with the information that Detective Baggett collected in his investigation of plaintiff in the week prior to his arrest clearly supported his reasonable belief that plaintiff violated Georgia's child exploitation law. Accordingly, the Court concludes that Detective Baggett lawfully arrested plaintiff. This conclusion is bolstered by the fact that, on the same day, Detective Baggett obtained an arrest warrant signed by a neutral, detached magistrate.[25]

[25] As discussed *supra,* plaintiff's allegations that Detective Baggett lied in his application for the arrest warrant is [sic] contradicted by plaintiff's admissions in his deposition, his affidavits, and his response to defendants' statement of undisputed facts. *But cf. Jones V. Cannon,* 174 F.3d 1271, 1285 (11th Cir. 1999).

50

Likewise, the officers had probable cause to arrest plaintiff on June 17, 1996. Indeed, Detective Baggett properly applied for and obtained an arrest warrant on the same day based on the fact that the officers had found a videotape made by plaintiff depicting a young, neighborhood girl performing a suggestive dance and exposing her breasts to the camera.

Moreover, it is undisputed that, in this video, the young girl motioned to him that her brother, a juvenile who was under the covers of his bed with his juvenile girlfriend, was being "jerked off" by his girlfriend. (Pl.'s Dep. at 192, 194-95.) Indeed, at the end of the video, the young girl came close to the camera and whispered to plaintiff that "she is jerking him off." Plaintiff responded, "And now the world will know." (*Id.* at 198.) This evidence clearly supports plaintiff's arrest under O.C.G.A. § 16-12-100. *See supra* note 23.

Finally, the officers in this case are entitled to qualified immunity, as plaintiff has failed to carry his burden of demonstrating that the officers violated "clearly established law" by arresting him on these two occasions. Indeed, plaintiff's admissions in his deposition clearly demonstrate that the officers had actual probable cause to arrest. *See Thornton v. City of Macon,* 132 F.3d 1395, 1399

51

(11th Cir. 1998) ("An officer is entitled to qualified immunity where the officer had arguable probable cause, that is, where reasonable officers in the same circumstances and possessing the same knowledge as the Defendants could have believed that probable cause existed to arrest the plaintiffs.") Accordingly, defendants motion for summary judgment as to these two claims is **GRANTED**.

5. Mav 17. 1996 Search and Seizure

Although plaintiff alleges that the police broke into his house and stole a police scanner and other files from him, he offers no evidence to support this claim. Indeed, the only evidence before the Court on this issue is from Detective Baggett's deposition. When asked if he broke into plaintiff's house and searched through plaintiff's belongings to seize additional items, Detective Baggett replied, "No, sir, I did not." (Baggett Dep. at 42.) Aside from plaintiff's accusations, plaintiff has offered no *evidence* that the police illegally searched his home and seized items on May 17, 1997. (See pl.'s Dep. at 173-75 (admitting that he did not know the identities of those who broke into his house on May 17, 1996).) Accordingly, defendants are entitled to summary judgment as to this claim

52

C. *Claims Against Municipal Defendants*

In *Monell v. Department of Social Services*, 436 U.S. 658 (1978), the

Supreme Court held that municipalities may not be found liable under 42 U.S.C. § 1983 on a theory of respondeat superior. *See also Scala V. City of Winter Park,* 116 F.3d 1396, 1399 (11th Cir. 1997). A local government is only liable under § 1983 "when execution of a government's policy or custom, whether made by its lawmakers or by those whose edicts or acts may fairly be said to represent official policy, inflicts the injury." *Mandel V. Doe,* 868 F.2d 783, 791 (11th Cir. 1989) (citing *Monell,* 436 U.S. at 694). It is by now well established that § 1983 liability may not be based on an employment relationship linking the local government to the offending employee; rather, "[r]ecovery from a municipality is limited to acts that are, properly speaking, acts 'of the municipality'--that is, acts which the municipality has officially sanctioned or ordered." *Id.* (citing *Pembaur v. Cincinnati,* 475 U.S. 469, 480 (1986)).

As the Court has concluded that the individual officers in this case did not commit any unconstitutional acts, the City cannot be liable under *Monell.* Moreover, plaintiff has offered absolutely no evidence in support of his municipal liability

claims. Accordingly, defendants' motion for summary judgment as to this ground is **GRANTED**.

III. State Law Claims

Because all the claims over which the Court had original jurisdiction now have been removed from the case due to the Court's decision to grant defendants' motions for summary judgment with respect to plaintiff's federal claims, § 1367(c)(3) applies.[26] As the Supreme Court has observed, "a federal court should consider and weigh in each case, and at every stage of the litigation, the values of judicial economy, convenience, fairness, and comity in order to decide whether to exercise jurisdiction over a case brought in that court involving pendant state-law claims. When the balance of these factors indicates that a case properly belongs in state court, as when the federal-law claims have dropped out of the lawsuit in its early stages and only state-law claims remain, the federal court should decline the exercise of jurisdiction by dismissing the case without prejudice." *Carnegie-Mellon Univ. v. Cohill,* 484 U.S. 343, 350 (1986) (footnote omitted). *See*

[24] This section provides that "(t]he district courts may decline to exercise supplemental jurisdiction over a claim under subsection (a) if the district court has dismissed all claims over which it has original jurisdiction;" 28 U.S.C. § 1367(c) (3).

54

also Hardy v. Birmingham Board. of Educ., 954 F.2d 1546, 1550 (11th Cir. 1992).

The court concludes that dismissal is appropriate in this case, because plaintiff's federal claims have been dismissed. Moreover, "[n]eedless decision of state law should be avoided both as a matter of comity and to promote justice between the parties, by procuring for them a surer-footed reading of applicable law. Certainly, if the federal claims are dismissed before trial, even though not insubstantial in a jurisdictional sense, the state claims should be dismissed as well." *United Mine Workers v. Gibbs*, 383 U.S. 715, 726 (1966). Accordingly, the Court dismisses plaintiff's remaining state law claims without prejudice.

CONCLUSION

For the foregoing reasons, defendants' Renewed Motion for Summary Judgment [145] should be **GRANTED**, defendants' Motion to Dismiss Notice of Appeal [156] is **DENIED**, plaintiff's Motion for Sanctions Hearing [158] is **DENIED**, plaintiff's Third Motion to Enlarge Time to File Response in Opposition to Defendants' Memorandum of Law in support of Motion for Summary Judgment [164] is **DENIED**, plaintiff's Second Motion to Strike the Defense of the Alleged Bar by the Georgia Civil statute of Limitations [165] is **DENIED**, plaintiff's Motion for

55

Reconsideration of the Court's Order of April 12, 2000 Denying the Plaintiff's Motions for the Sanction of Default Judgment or, in the Alternative, Motion to Request Amendment of Order [166] is **DENIED**, and plaintiff's Motion for Reconsideration of the Court's Order of April 12, 2000 Denying the Plaintiff's Motions for Enlargement of Time to File Response to Defendants' Motion for Summary Judgment or, in the Alternative, Motion to Request Amendment of Order [167] is **DENIED**.

SO ORDERED, this 5 day of May, 2000.

/s/ Julie E Carnes
JULIE E. CARNES
UNITED STATES DISTRICT JUDGE

56

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF. GEORGIA
ATLANTA DIVISION

CHRISTOPHER T HARRIS,

Plaintiff,

vs.

CITY OF DORAVILLE, CITY OF DORAVILLE POLICE DEPARTMENT, CHIEF RON DAVIS, MAJOR CLIFFORD EDWARDS, LIEUTENANT ROBERT BROWN, DETECTIVE T.L. BAGGETT, SERGEANT H.M. PRITCHETT, OFFICER BETH STOCK, and UNKNOWN DORAVILLE POLICE OFFICERS

Defendants.

CIVIL ACTION FILE
NO.1:98-cv-1326-JEC

JUDGMENT

This action having come before the court, Honorable Julie E. Carnes, United States District Judge, for consideration of defendants' motion for summary judgment, and the court having granted said motion, it is

Ordered and Adjudged that the plaintiff take nothing; that the defendants recover its costs of this action, and the action be, and the same hereby, is **dismissed**.

Dated at Atlanta, Georgia, this 8th day of May, 2000.

LUTHER D. THOMAS
CLERK OF COURT
By: /s/ Wendy S. Evans
Deputy Clerk

Prepared, Filed and Entered
in the Clerk's Office
May 8, 2000
Luther D. Thomas
Clerk of Court
By: /s/ Wendy S. Evans
Deputy Clerk

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

CHRISTOPHER T. HARRIS

Plaintiff,

v.

CIVIL ACTION NO.
1:98-CV-1326A-JEC

CITY OF DORAVILLE, CITY OF DORAVILLE POLICE DEPARTMENT, CHIEF RON DAVIS, MAJOR CLIFFORD EDWARDS, LIEUTENANT ROBERT BROWN, DETECTIVE T.L. BAGGETT, SERGEANT H.M. PRITCHETT, OFFICER BETH STOCK, and UNKNOWN DORAVILLE POLICE OFFICERS

Defendants.

ORDER

This case is presently before the Court on plaintiff's Motion for Reconsideration of the Court's Order of May 8, 2000 Granting the Defendants' Motion for Summary Judgment [176] and plaintiff's Motion to Alter or Amend Order and Judgment [177]. The Court has reviewed the record and the arguments af the parties and, for the reasons set forth below, concludes that plaintiff's Motion for Reconsideration of the Court's Order of May 8, 2000 Granting the Defendants' Motion for Summary Judgment [176] is **DENIED** and plaintiff's Motion to Alter or

[unnumbered page break]

Amend Order and Judgment [177] is **DENIED**.

SO ORDERED, this 13 day of June, 2000.

/S/ Julie E. Carnes
JULIE E. CARNES
UNITED STATES DISTRICT JUDGE

[DO NOT PUBLISH]

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 00-13645
Non-Argument Calendar

D.C. Docket No. 98-01326-CV-JEC-1

CHRISTOPHER T. HARRIS,

Plaintiff-Appellant,

versus

CITY OF DORAVILLE, Georgia,
DORAVILLE POLICE DEPARTMENT, et al.,

Defendants-Appellees.

Appeal from the United States District Court for the
Northern District of Georgia

(April 6, 2001)

Before EDMONDSON, MARCUS and WILSON, Circuit Judges.

PER CURIAM:

[unnumbered page break]

Christopher T. Harris, proceeding pro se, appeals the district court's order granting summary judgment in favor of the defendants in his civil rights action, filed pursuant to 42 U.S.C. § 1983 and 28 U.S.C. § 1367. On appeal, Harris argues that the district court erred (1) in its evidentiary rulings

in granting summary judgment; (2) by failing to grant his motions for extension of time in which to file a response to the defendants' motion for summary judgment; (3) by denying various discovery motions; (4) by denying his motion for immediate stay; and (5) by denying his motions for leave to file an amended complaint and to add defendants.

We review the district court's evidentiary rulings for abuse of discretion, and will reverse only if the moving party establishes that the ruling resulted in a substantial prejudicial effect. See Alexander v. Fulton County, Ga., 207 F.3d 1303, 1326 (11th Cit. 2000). A district court's decision to grant or deny a stay of proceedings before it is discretionary, and we will not disturb that decision absent an abuse of discretion. See Barfield v. Brierton, 883 F.2d 923, 932 (11th Cit. 1989). Decisions on discovery are entrusted to the sound discretion of the district court and are reviewed for abuse of

[1] Harris also argues that the district court erred by finding that "arguable probable cause" and "exigent circumstances" existed to warrant his arrest and the search of his home; finding that the city of Doraville could not be held liable under a theory of respondeat superior; holding that his claims arising out of his May 1, 1996, arrest were barred by the statute of limitations; and declining to exercise supplemental jurisdiction over his state law claims. In its 56-page order, the district court throughly addressed each of these issues and rejected them. After a de novo review, viewing the evidence and all reasonable inferences in favor of the defendants, we too find that these arguments have no merit. See Patrick v. Floyd Med. Cit., 201 F.3d 1313, 1315 (11th Cir. 2000).

discretion. See Burger King Corp. v. Weaver, 169 F.3d 1310, 1315 (11th Cir.), cert. dismissed, 528 U.S. 948 (1999). We likewise review decisions on motions for leave to amend pleadings for abuse of discretion. See id.

Upon thorough review of the record, as well as careful consideration of the parties' briefs, we find no reversible error and affirm.

The relevant facts are straightforward. On May 8, 1998, Harris filed this civil rights action against numerous defendants including the City of Doraville, Georgia; the Doraville Police Department; Ron Davis, the Chief of Police; Major Clifford Edwards; Lieutenant Robert Brown; Detective T.L. Baggett; Officer H.M. Pritchett; Officer Beth Stock; and various unnamed Doraville police officers. Harris's complaint arose out of the Doraville officers' actions in responding to a 911 call placed by Harris and the officers' subsequent investigation and arrest of Harris for felony sexual exploitation of children and misdemeanor exploitation of children in a visual medium.

On May 1, 1996, Harris placed a 911 call to report that his son had just fired a revolver at him five times in a residential neighborhood. When the police arrived, they began a search of Harris's house, during which they discovered pictures, videotapes, and other paraphernalia of children being sexually exploited. Harris alleged that this, and other subsequent searches, were unconstitutional, and that his arrest on June 17, 1996 for felony sexual exploitation of children was not supported by probable cause. Harris

sought both compensatory and punitive damages and an order enjoining the defendants from further abusive conduct.

The district court granted summary judgment in favor of the defendants, finding that since Harris did not file his complaint until May 8, 1998, the counts as to the May 1, 1996 search and seizure were barred by the two-year statute of limitations, O.C.G.A. § 9-3-33, since the facts underlying the action were apparent to a reasonably prudent person at that time, see Mullinax v. McElhennev, 817 F.2d 711, 716 (11th Cir. 1987). The district court also found that the officers were performing discretionary functions when they performed the searches, seizure and ultimate arrest of Harris, and that their actions did not violated [sic] clearly established law. Accordingly, the district court found that the defendants were entitled to qualified immunity.

We can find no error in the district court's analysis of the statute-of-limitations and qualified immunity defenses. Indeed, with regard to the latter, we note that even if Harris could demonstrate a violation of his Fourth Amendment rights, he wholly failed to carry his burden of persuasion in the district court. "Once an officer or official has raised the defense of qualified immunity, the burden of persuasion on that issue is on the plaintiff." Montoute, 114 F. 3d at 184. "The burden of showing that an officer violated clearly established law falls on the plaintiff, and a plaintiff's citation of general rules and abstract rights is insufficient to strip a § 1983 defendant of his qualified immunity." Jackson v. Sauls, 206 F. 3d 1156, 1165 (11th Cir. 2000). Here, Harris failed to even respond to the

defendants' motion for summary judgment. He did not present any evidence in opposition to the defendant's motion, nor did he cite case law supporting his contention that the officers' actions violated his constitutional rights. We

can find no error in the district court's determination to enter summary judgment on Harris's claims.

Harris also argues that the district court improperly relied on various items that were not entered into evidence in granting summary judgment to the defendants. Our review of the record reveals that the district court did not rely on improper evidence in granting summary judgment to the defendants. First, the district court had the authority to use the transcript of Harris' deposition because a court may rely on the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, to show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law, when handling a summary judgment motion. See Fed.R.Civ.P. 56; Clark, 929 F.2d at 608. Although Harris contends that he was denied access to this transcript, he admits that the reason he could not obtain it was because he refused to pay for it.

Furthermore, the district court also permissibly discussed one of the seized pictures in its order since the photo was described in Detective Baggett's deposition, which was submitted into evidence. Harris's argument that the district court improperly relied on the photograph itself, which was not entered into evidence, has no merit.

Moreover, despite Harris' allegations, the district court did not make factual errors which warrant a reversal of the grant of summary judgment to the defendants. On the contrary, the "errors" that Harris asserts are nothing more than a disagreement with the court on its selection of wording, and Harris presents no substantive argument that he could not have presented in response to the defendants' motion for summary judgment, which he refused to file. Harris was given ample opportunity to give his rendition of the facts in response to the summary judgment motion but refused to take this opportunity. Indeed, the district court relied on statements made in Harris' own deposition which, surely, presented the facts of the case as Harris saw them. Simply put, Harris has not established that any genuine issues of material fact remained that would prevent the entry of summary judgment in the defendants' favor.

Next, Harris challenges the district court's decisions on his motions to compel the defendants to produce certain information relating to the pending felony charge, motions requesting leave to depose certain witnesses for a second time, motions requesting discovery hearings, and motions asking

the court to impose sanctions on the defendants for their failure to produce the requested materials. The district court denied each of these motions. Harris contends the court abused its discretion because (1) there was no ongoing criminal investigation; (2) the questions he wanted to ask in deposing Baggett and Stock a second time were never answered the first time and were unobtainable elsewhere; (3) he could not proceed further without the requested materials from the

defendants; (4) he was entitled to a hearing so that the district court could ascertain whether there truly was an ongoing criminal investigation taking place; and (5) the court should have allowed Harris to demonstrate the veracity of his claims that the defendants were willfully violating discovery violations under the guise of a privilege.

As a general rule, summary judgment should not be granted until the party opposing the motion has had an adequate opportunity to conduct discovery. See Reflectone, Inc. v. Farrand Optical Co., Inc., 862 F.2d 841 (11th Cir. 1989). Summary judgment may only be decided upon an adequate record; therefore, the party opposing summary judgment may move the court to permit discovery which is necessary to oppose the motion. See Fed.R.Civ.P. 56(f); Reflectone, 868 F.2d at 843. A party to a lawsuit is entitled to all information relevant to the subject matter of the suit unless such information is privileged. See Fed.R.Civ.P. 26(b)(1). The pendency of a criminal investigation is one such reason for denying discovery of investigative reports in a subsequent or contemporaneous civil case. See In re Eisenberg, 654 F.2d 1107, 1110-11 n.5 (5th Cir. Sept. 1981).

Here, the information Harris sought was not discoverable because it was privileged as it related to the ongoing investigation of his felony charge. See In re Eisenberg, 654 F.2d at 1110-11 n.5. The crux of each of Harris's numerous discovery motions, as well as his appellate brief, is that the defendants were not entitled to claim a privilege over the requested materials of an ongoing criminal investigation, because they had failed to prove

that there actually was an ongoing criminal investigation. Despite the district court's numerous orders denying each of these motions and declaring that the defendants were, indeed, entitled to the privilege, Harris continues to contest this finding. Quite simply, this argument is without merit as the district court

determined that the requested materials related to the pending felony charge of sexual exploitation of children and, therefore, constituted an ongoing criminal investigation. The district court did not abuse its discretion in making this determination. See In re Eisenberg, 654 F.2d at 1111 n.5.

With respect to Harris's motions to depose certain witnesses for a second time, the Federal Rules of Civil Procedure prohibit repeated depositions without leave of court. See Fed.R.Civ.P.30(a)(2)(B). The district court determined that Harris had a full and fair opportunity to question the defendants at the first deposition, and that Harris's discontent with some of the objections made by the defendants at the deposition was not a sufficient reason to allow for a second deposition. We can find no abuse of discretion in this decision. See Weaver, 169 F.3d at 1315.

Moreover, with regard to Harris's motions requesting discovery and sanctions hearings, the district court specifically found that the defendants had "complied fully with the Court's Orders." Harris nevertheless contends that the district court erred in making this finding because the defendants had asserted "patently fraudulent" claims of a privilege. As we have determined that the district court did not err in finding that the

requested materials were privileged, we also find no abuse of discretion in its refusal to conduct hearings relating to the defendants' assertion of privilege.

Next, Harris argues that there has been an unconstitutional delay in resolving pending "equitable litigation which is of fundamental merit" to the instant civil action. The so-called "equitable litigation," according to Harris, is the pending felony charge. He submits that the defendants have unconstitutionally delayed the prosecution of this charge in an attempt to sabotage Harris's prosecution of the instant civil action. We are not persuaded.

Harris was arrested on two charges stemming from the events giving rise to this civil action. The misdemeanor charge was dismissed on April 28, 1998. The second charge, involving felony sexual exploitation of children, was not dismissed. In numerous motions, Harris requested that the court stay the civil proceedings because he had not been given certain information relating to the felony charge by the defendants. The district court denied these motions, noting that Harris's motions were merely attempts to seek discovery of materials that it had already denied him on more than one occasion. A motion for stay of the proceedings is granted upon the showing of four factors which include that the movant is likely to prevail on the merits. See

Garcia-Mir v. Meese, 781 F.2d 1450, 1453 (11th Cir. 1986). Harris was not likely to prevail on the merits of his motion because, as discussed above, he was not entitled to discovery of the materials he was seeking. The district court did not err by denying his motions for stay.

9

Harris also argues that the district court abused its discretion in refusing to grant him leave to file amended pleadings to correct certain typographical and syntactical errors, to improve language and comprehension, to add counts alleging violations of the Sixth Amendment right to counsel based on the police officers' alleged refusal to allow him to contact an attorney at any time before his bond hearing relating to the May 9, 1996, arrest, and to add a new cause of action for malicious conspiracy.

A party may amend a pleading after a responsive pleading has been filed "only by leave of court or by written consent of the adverse party; and leave shall be freely given when justice so requires." Fed.R.Civ.P. 15(a). If a complaint is subject to dismissal for any reason, including for failure to state a claim, leave to amend need not be given. See Halliburton & Associates v. Henderson, Few & Co., 774 F.2d 441, 444 (11th Cir. 1985). The district court found Harris's Sixth Amendment claims to be futile and unsupported by the evidence he brought forth in his motion. We can find no error in this conclusion since it is well-established that the right to counsel does not attach until the state "initiates adversarial judicial proceedings... and has committed itself to prosecute the defendant, "by way of preliminary hearing, indictment, information or arraignment. United States v. Langley, 848 F.2d 152, 153 (11th Cir.), cert. denied, 488 U.S. 897 (1988). An arrest or warrant for an arrest does not trigger the Sixth Amendment protections. See id. Harris could not have prevailed on this claim because his Sixth Amendment rights had not

10

attached prior to the bond hearing, and as he concedes in the motion, he was provided with counsel at that preliminary hearing.

Furthermore, the district court determined that Harris had ample opportunity to raise his conspiracy claim prior to filing a second motion for leave to file an amended pleading since he based the allegation on the same facts that were available to him at the filing of the original complaint. The court did not err in its determination, as Harris concedes in his amended complaint, that the basis for the conspiracy charge was the same facts as were

laid out in the original complaint. Denial of a motion for leave to amend where the facts supporting the proposed amendment were known at the time of the original pleading, and where the amendment would cause delay at a late stage in the proceedings, is proper. See National Serv. Indus., Inc. v. Vafla Corp., 694 F.2d 246, 249 (11th Cir. 1982). The district court did not abuse its discretion in refusing to allow the amended pleadings.

Finally, Harris argues that the district court erroneously denied him additional time to file a response to the defendants' motion for summary judgment. When a litigant requests an extension of a time period, the court may grant the extension if the failure to file in a timely manner would be the result of excusable neglect. See Fed.R.Civ.P. 6(b). Excusable neglect requires an examination of all relevant circumstances, including the danger of prejudice to the nonmovant, the length of the delay and its impact on the proceedings, the reason for the delay, including whether it is within the control of the

movant, and whether the movant is acting in good faith. See Advanced Estimating Sys. Inc. v. Riney, 77 F.3d 1322, 1325 (11th Cir. 1996).

The district court did not abuse its discretion in refusing to grant Harris any further extensions of time in which to file his response, especially in light of the fact that, as discussed above, Harris was not entitled to the privileged information he sought during discovery. Moreover, the district court many times noted that the length of the delay was due in no small measure to Harris's numerous discovery and sanctions motions. Indeed, the district court cautioned Harris that if he were a litigant represented by counsel, it would have long since sanctioned him for his frivolous motions. The district court did not err by denying Harris's requests for extensions of time to reply to the defendants' motion for summary judgment motions.

AFFIRMED.

United States Court of Appeals

For the Eleventh Circuit

No.00-13645

District Court Docket No.
98-01326-CV-JEC-1

CHRISTOPHER T HARRIS,
Plaintiff-Appellant,

versus

CITY OF DORAVILLE, Georgia,
DORAVILLE POLICE DEPARTMENT,
RON DAVIS, Chief of Police,
CLIFFORD EDWARDS, Major,
ROBERT BROWN, Lt., et al.,

Defendants-Appellees.

Appeal from the United States District Court
for the Northern District of Georgia

JUDGMENT

It is hereby ordered, adjudged, and decreed that the attached opinion, included herein by reference, is entered as the judgment of this court.

Entered: April 6, 2001
For the Court: Thomas K. Kahn, Clerk
By: McCombs, Elaine

[last page]

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No. 00-13645-FF

CHRISTOPHER T. HARRIS,

Plaintiff-Appellant.

versus

CITY OF DORAVILLE, Georgia,
DORAVILLE POLICE DEPARTMENT,
RON DAVIS, Chief of Police,
CLIFFORD EDWARDS, Major,
ROBERT BROWN, Lt., et al.,

Defendants-Appellees.

On Appeal from the United States District Court for the
Northern District of Georgia

BEFORE: EDMONDSON, MARCUS and WILSON, Circuit Judges.

PER CURIAM:

The petition(s) for rehearing filed by appellant is DENIED.

ENTERED FOR THE COURT:

/s/ signature illegible
UNITED STATES CIRCUIT JUDGE

ORD-41

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